and the inhabitants thereof, with the exceptions aforesaid, is unlawful, and will remain unlawful until such insurrection shall cease or has been suppressed, and notice thereof has been given by proclamation." Vicksburg was not excepted from the operation of this proclamation, so that commercial intercourse, except with the license of the President, between Vicksburg and New Orleans was unlawful at the time at which presentment of these checks was made. The license given to Billgery by the military authorities was a nullity: *Ouachita Cotton*, 6 Wall. R. 521. The demand of payment, therefore, which was made, was one which the plaintiff could not lawfully make, and which the Canal Bank could not lawfully comply with. A demand to charge the endorsers should have been one which the Bank might lawfully have complied with.

In respect to the question of notice of dishonor, very little need be said. To give any effect to the notice deposited in the post-office in New Orleans in October 1863, it should at least have been shown that the law, or a general usage, required that the letter containing the notice should be preserved by the postmaster until the restoration of intercourse, and then forward it to its destination. In the absence of such proof, the deposit of a notice in the post-office at New Orleans, addressed to Petersburg, in the midst of the war, was of no avail. It is not necessary to express an opinion as to whether the evidence is sufficient to prove that due notice was given to the defendants after the close of the war.

Upon the whole, I am of opinion that the judgment ought to be affirmed.

MONCURE, P., concurred.

RIVES, J., dissented.

Supreme Court of Wisconsin.

EMMA SCHNEIDER *v.* THE PROVIDENT LIFE INSURANCE CO.

An "accident" within the meaning of a policy of insurance means an event which happens from some external violence or *vis major*, and which is unexpected, because it is from an unknown cause, or is an unusual result of a known cause.

Negligence of the person injured does not prevent it from being an accident.

Therefore in an action on a policy of insurance against accident, the negligence of the insured is no defence.

A policy of insurance against accident contained a clause against liability for

injury resulting from the assured "wilfully and wantonly exposing himself to any unnecessary danger." The assured attempted to get on a train of cars while in slow motion, and fell and was killed. *Held*, that the negligence was not wilful or wanton, and the company were liable.

THIS was an action on a policy, by which Bruno Schneider was insured against injury or death by accident. The policy contained a clause that the company should not be liable for any injury happening to the assured by reason of his "wilfully and wantonly exposing himself to any unnecessary danger or peril."

The assured attempted to get on a train of cars after it had started, but was moving slowly, but fell and was killed. On the trial the plaintiff was nonsuited, on the ground that the evidence showed the case to be within the exception as to wilful exposure to danger.

The opinion of the court was delivered by

PAINE, J.—The position most strongly urged by the respondent's counsel in this court, was that inasmuch as the negligence of the deceased contributed to produce the injury, therefore the death was not occasioned by an accident at all, within the meaning of the policy. I cannot assent to this proposition. It would establish a limitation to the meaning of the word "accident" which has never been established either in law or in common understanding. A very large proportion of those events which are universally called accidents happen through some carelessness of the party injured, which contributes to produce them. Thus men are injured by the careless use of firearms, of explosive substances, of machinery, the careless management of horses, and in a thousand ways, when it can readily be seen afterwards that a little greater care on their part would have prevented it. Yet such injuries having been unexpected and not caused intentionally or by design, are always called accidents, and properly so. Nothing is more common than items in the newspapers under the heading, "Accidents through carelessness."

There is nothing in the definition of the word that excludes the negligence of the assured party as one of the elements contributing to produce the result. An accident is defined as "an event that takes place without one's foresight or expectation; an event which proceeds from an unknown cause; or is an unusual effect of a known cause, and therefore not expected."

An accident may happen from an unknown cause. But it is not essential that the cause should be unknown. It may be an unusual result of a known cause, and therefore unexpected to the party. And such was the case here, conceding that the negligence of the deceased was the cause of the accident.

It is true that accidents often happen from such kinds of negligence. But still it is equally true that they are not the usual result. If they were, people would cease to be guilty of such negligence. But cases in which accidents occur are very rare in comparison with the number in which there is the same negligence without any accident. A man draws his loaded gun toward him by the muzzle—the servant fills the lighted lamp with kerosene, a hundred times without injury. The next time the gun is discharged, or the lamp explodes. The result was unusual, and therefore unexpected. So there are undoubtedly thousands of persons who get on and off from cars in motion without accident, where one is injured. And therefore when an injury occurs it is an unusual result, and unexpected, and strictly an accident. There are not many authorities on the point. The respondent's counsel cites *Theobald* v. *The Railway Passengers' Assurance Co.*, 26 E. Law & Eq. 432, not as a direct authority, but as containing an implication that the negligence of the injured party would prevent a recovery. I do not think it can be construed as conveying any such intimation. The insurance there was against a particular kind of accident; that was a railway accident, and the only question was, whether the injury was occasioned by an accident of that kind. The court held that it was, and although it mentions the fact that there was no negligence on the part of the assured, that cannot be considered as any intimation what would have been the effect of negligence if it had existed.

The general question as to what constituted an accident was considered in two subsequent cases in England. The first was *Sinclair* v. *The Maritime Passengers' Assurance Co.*, 3 El. & El. 478 (E. C. L. R. vol. 107), in which the question was, whether a sunstroke was an accident within the meaning of the policy. The court held that it was not, but was rather to be classed among diseases occasioned by natural causes, like exposure to malaria, &c., and while admitting the difficulty of giving a definition to the term accident which would be of universal application, they say they may safely assume "that some violence, casualty, or *vis major*

is necessarily involved." There could be no question in this case that all these were involved.

In the subsequent case of *Trew* v. *Railway Passengers' Assurance Co.*, 6 Hurl. & Nor. 839, the question was, whether a death by drowning was accidental. The counsel relied on the language of the former case, and urged that there was no external force or violence. But the court held that if the death was occasioned by drowning, it was accidental within the meaning of the policy. And in answer to the argument of counsel they said: "If a man fell from a housetop, or overboard from a ship, and was killed; or if a man was suffocated by the smoke of a house on fire, such cases would be excluded from the policy, and the effect would be, that policies of this kind, in many cases where death resulted from accident, would afford no protection whatever to the assured. We ought not to give to these policies a construction which will defeat the protection of the assured in a large class of cases."

There was no suggestion that there was any question to be made as to the negligence of the deceased, and yet the court said: "We think it ought to be submitted to the jury to say whether the deceased died from the action of the water, or natural causes. If they are of the opinion that he died from the action of the water, causing asphyxia, that is a death from external violence within the meaning of the policy, whether he swam to a distance and had not strength enough to regain the shore, or on going into the water got out of his depth."

Now either of these facts would seem to raise as strong an inference of negligence as an attempt to get upon cars in slow motion. Yet the court said that although the drowning was occasioned by either one of them, it would have been a death within the meaning of the policy, and the plaintiffs entitled to recover. I cannot conceive that it would have made such a remark except upon the assumption that the question, whether the injured party was guilty of negligence contributing to the accident, does not arise at all in this class of cases. I think that is the true conclusion, both upon principle and authority, so far as there is any upon the subject; and the only questions are, first, whether the death or injury was occasioned by an accident within the general meaning of the policy, and if so, whether it was within any of the exceptions.

This conclusion is also very strongly supported by that provision of the policy under which the plaintiff was nonsuited. That

necessarily implies that any degree of negligence falling short of "wilful and wanton exposure to unnecessary danger" would not prevent a recovery. Such a provision would be entirely superfluous and unmeaning in such a contract, if the observance of due care and skill on the part of the assured constituted an element to his right of action, as it does in actions for injuries occasioned by the negligence of the defendant.

The question therefore remains whether the attempt of the deceased to get upon the train was within this provision, and constituted a "wilful and wanton exposure of himself to unnecessary danger?" I cannot think so. The evidence showed that the train having once been to the platform, had backed so that the cars stood at some little distance from it; while it was waiting there the deceased was walking back and forth on the platform (of the depot). It is very probable that he expected the train to stop there again before finally leaving. But it did not. It came along, and while moving at a slow rate, or as fast as a man could walk, he attempted to get on and by some means fell either under or by the side of the cars and was crushed to death. The act may have been imprudent. It may have been such negligence as would have prevented a recovery in an action based upon the negligence of the company if there had been any. But it does not seem to have contained those elements which could be justly characterized as wilful or wanton. The deceased was in the regular prosecution of his business. He desired and expected to leave on that train. Finding that he would be left unless he got on while it was in motion, it was natural enough for him to make the attempt. The strong disinclination which people have to being left, would impel him to do so. The railroad employees were getting on at about the same time. Imprudent though it is, it is a common practice for others to get on and off in the same manner. He had undoubtedly seen it done, if he had not done it himself, many times with out injury. I cannot regard it, therefore, as a wilful and wanton exposure of himself to unnecessary danger within the meaning of the policy.

The judgment is reversed, and a *venire de novo* awarded.